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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/807,575	03/18/2004	Joyce J. Evans	0170.03	4131
25712	7590	07/03/2006		
USDA-ARS-OFFICE OF TECHNOLOGY TRANSFER NATIONAL CTR FOR AGRICULTURAL UTILIZATION RESEARCH 1815 N. UNIVERSITY STREET PEORIA, IL 61604				EXAMINER MINNIFIELD, NITA M
				ART UNIT 1645 PAPER NUMBER

DATE MAILED: 07/03/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/807,575	EVANS ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	N. M. Minnfield	1645	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 30 November 2005.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-9,11-18 and 21 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) 1-4,6-9,11-18 and 21 is/are allowed.
- 6) Claim(s) 5 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 18 March 2004 is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All    b) Some \* c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- 1) Notice of References Cited (PTO-892) 3pgs.
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4) Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) Notice of Informal Patent Application (PTO-152)
- 6) Other: \_\_\_\_\_.

## **DETAILED ACTION**

### ***Response to Amendment***

1. Applicants' amendment filed November 30, 2005 is acknowledged and has been entered. Claims 10, 19 and 20 have been canceled. New claim 21 has been added. Claims 1-9, 11-18 and 21 are now pending in the present application. All rejections have been withdrawn in view of Applicants' amendment to the claims and/or comments, with the exception of those discussed below.
2. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
3. Applicant's election with traverse of Group I, claims 1-9 and 11-18, in the reply filed on November 30, 2005 is acknowledged. The traversal is on the ground(s) that the search for any one group would have been co-extensive for the others, and that an examination of all claims would not have entailed a serious burden. This is not found persuasive because the restriction Groups have acquired a separate status in the art as a separate subject for inventive effect and require independent searches. The search for each of the above inventions is not co-extensive particularly with regard to the literature search. A reference, which would anticipate the invention of one group would not necessarily anticipate or make obvious any of the other groups. Moreover, as to the question of burden of search, classification of subject matter is merely one indication of the burdensome nature of the search involved. The literature search, particularly relevant in this art, is not co-extensive and is much more important in evaluating the burden of

search. Burden in examining materially different groups having materially different issues also exist.

The requirement is still deemed proper and is therefore made FINAL.

4. The use of the trademarks has been noted in this application. It should be capitalized wherever it appears and be accompanied by the generic terminology.

Although the use of trademarks is permissible in patent applications, the proprietary nature of the marks should be respected and every effort made to prevent their use in any manner, which might adversely affect their validity as trademarks.

5. The disclosure is objected to because of the following informalities: the figure descriptions are not understood. For example, it is note clear what group is of the symbols represents in figure 2. Applicants should ensure that the figure descriptions and the actual figures and the symbols used are all the same and clearly distinguished. Appropriate correction is required.

This objection is maintained for the reasons of record. With regard to figure 2, it is not clear which data points are circles. The Examiner requests that Applicants submit substitute pages of the figures.

6. Claim 5 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 5 is vague and indefinite in the recitation of “substantially free”; what are the metes and bounds of this phrase?

The rejection is maintained for the reasons of record. Neither the specification nor the comments in the November 30, 2005 amendment indicate what is “substantially free”. What is an acceptable level of contaminants? How much is a relatively small amount of contaminating intracellular product? A review of paragraph [0024] does not answer these questions. These are all relative terms (small, substantially) and the metes and bounds have not been defined.

7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

8. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to N. M. Minnifield whose telephone number is

571-272-0860. The examiner can normally be reached on M-F (8:00-5:30) Second Friday Off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lynette R.F. Smith can be reached on 571-272-0864. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



N. M. Minnifield

Primary Examiner

Art Unit 1645

NMM

June 26, 2006